

Application No.: 09/748,717

Art Unit: 2623

REMARKS / ARGUMENTS

Claims 79 – 146 were previously pending in this application. With the present amendment claims 97 – 146 are being cancelled. Claims 79 – 96 remain pending and stand rejected.

Independent claim 79 was rejected under 35 U.S.C. § 103 as being unpatentable over *McNamara et al.* (U.S. Patent No. 4,533,948), in view of *Binns et al.* (U.S. Patent No. 5,329,308), *Darcie* (U.S. Patent No. 4,701,904), and *Hoarty et al.* (U.S. Patent No. 5,526,034).

Applicant respectfully traverses the rejection in view of the numerous arguments previously submitted (see reply dated 11-05-2004 and reply dated 8-12-2005), and in view of the following additional arguments:

The Examiner acknowledges that: “*McNamara* and *Binns* fail to disclose the bandwidth allocated to each of the plurality of subscriber destinations is unshared, in the sense that only a given subscriber destination from a plurality of subscriber destinations forwards or receives information utilizing it’s allocated unshared bandwidth ...”. Office Action pp. 6-7. (hereinafter the “‘unshared bandwidth’ limitation”).

To fills this void the Examiner points to *Darcie* as allegedly teaching the ‘unshared bandwidth’ limitation. The Examiner asserts that it would have been obvious to modify *McNamara* and *Binns* to include the ‘unshared bandwidth’ limitation, “for the benefit of eliminating any contention problems that would otherwise arise from the use of the system by multiple users”. Office Action p. 7.

Applicant respectfully disagrees. *McNamara* expressly teaches a system that “permits many users to share the same data channel” (col. 5, lines 40-41). Thus, the Examiner’s assertion that it would have been obvious to modify *McNamara* and *Binns* to include allocating ‘unshared bandwidth’ to each user, in order to eliminate “contention problems”, is entirely without merit. Neither *McNamara* nor *Binns* complain about any “contention problems” with a ‘shared’ system, so as to warrant such modification.

Application No.: 09/748,717

Art Unit: 2623

The Supreme Court recently cautioned in *KSR International Co. v. Teleflex Inc., et al.* 550 U.S. ___, 82 USPQ2d 1385 (2007): "[R]ejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *KSR*, 550 U.S. at ___, 82 USPQ2d at 1396, quoting *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006).

Here the Examiner provides nothing more but a conclusory statement. The Examiner's assertion that it would be obvious to modify *McNamara* and *Binns* to include the 'unshare bandwidth' limitation in order to eliminate "contention problems" is merely conclusory. The Examiner fails to detail the nature of such purported "contention problems", and as to how the proposed modification would have resolved such "contention problems".

Further, The 'unshared bandwidth' limitation of claim 79 is not analogous to the teachings of *Darcie*. As the Examiner correctly recognizes *Darcie* teachings "[provide] maximum use of the available frequency spectrum ..." Office Action p. 7. However, the invention of claim 79 does not achieve that. To the contrary; by not sharing bandwidth, the claimed invention, essentially does not maximize the usage of available frequency spectrum. Thus, it is clear that whatever *Darcie* teaches – it is not analogous to the 'unshared bandwidth' limitation of claim 79.

Moreover, modifying *McNamara* to include the 'unshared bandwidth' limitation, would have defeated *McNamara*'s system, as *McNamara* requires at least two communicating subscribers to be on the same channel ("Naturally, for two communicating subscriber units to communicate they must both be on the same data channel". *McNamara*, Col. 5, lines 33-34).

The rejection of dependent claims 80 – 96 which depend from claim 79, are traversed for the same reasons as noted above with respect to claim 79.

Application No.: 09/748,717

Art Unit: 2623

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CENTRAL FAX CENTER****FEB 29 2008****CONCLUSION**

In view of the foregoing arguments, it is respectfully urged that each of the pending claims is in condition of allowance. Should the Examiner feel that an interview would be helpful in advancing the present application, the Examiner is respectfully invited to contact the undersigned at the number listed below in order to schedule an interview.

Dated: February 29, 2008

Respectfully submitted,

Signature: /Benzion A. Wachsman/

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*A statement under 37 CFR § 3.73(b) is attached

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Dated: February 29, 2008/Benzion A. Wachsman/

Benzion A. Wachsman